

# ARKANSAS SUPREME COURT

No. CR 06- 622

NOT DESIGNATED FOR PUBLICATION

WILLIE BROWN  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered      October 5, 2006

*PRO SE* MOTION FOR EXTENSION  
OF TIME TO FILE BRIEF [CIRCUIT  
COURT OF CRITTENDEN COUNTY,  
CR 97-803, CR 97-1065, HON.  
CHARLES DAVID BURNETT, JUDGE]

APPEAL DISMISSED; MOTION MOOT

## PER CURIAM

Appellant Willie Brown is an inmate in the custody of the Arkansas Department of Correction. Appellant filed a *pro se* petition for writ of *habeas corpus* in Crittenden County Circuit Court, which petition was denied. Appellant has lodged an appeal of that order in this court, and in the motion now before us requests an extension of time in order to file appellant's brief. Because it is clear that appellant could not prevail on appeal, we must dismiss his appeal, and the motion is therefore moot.

This court has consistently held that an appeal of the denial of postconviction relief, including an appeal from an order that denied a petition for writ of *habeas corpus*, will not be permitted to go forward where it is clear that the appellant could not prevail. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (*per curiam*); *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (*per curiam*); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994)

(*per curiam*). Here, it is clear that appellant cannot prevail because he is not incarcerated in Crittenden County.

A circuit court does not have jurisdiction to release on a writ of *habeas corpus* a prisoner not in custody in that court's jurisdiction. *Pardue*, 338 Ark. at 607-608, 999 S.W.2d at 199 (citing *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991)). Appellant did not file a motion requesting scientific testing under Act 1780 of the 2001 Acts of Arkansas, codified as Ark. Code Ann. §§ 16-112-201 – 16-112-207 (Repl. 2006). In this case, the circuit court does not have jurisdiction to release appellant, as he is not in custody within the court's jurisdiction. Even were appellant successful on the merits of the petition, the court could not grant the remedy requested. The trial court was without jurisdiction to return the writ.

Appeal dismissed; motion moot.